

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Promote Policy and
Program Coordination and Integration in Electric Utility
Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

Order Instituting Rulemaking to Promote Consistency in
Methodology and Input Assumptions in Commission
Applications of Short-run and Long-run Avoided Costs,
Including Pricing for Qualifying Facilities.

Rulemaking 04-04-025
(Filed April 22, 2004)

**REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY ON THE
ALTERNATE PROPOSED DECISION OF COMMISSIONER GRUENEICH**

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September 17, 2007

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**BEFORE THE PUBLIC UTILITIES COMMISSION
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Rulemaking 04-04-025
(Filed April 22, 2004)

**REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY ON THE
ALTERNATE PROPOSED DECISION OF COMMISSIONER GRUENEICH**

I. INTRODUCTION

Pursuant to Article 14 of the California Public Utilities Commission's ("CPUC" or "Commission") Rules of Practice and Procedure, San Diego Gas & Electric Company ("SDG&E") files these Reply Comments to the Opening Comments that various parties¹ filed on September 10, 2007, to the Alternate Proposed Decision of Commissioner Grueneich ("Alternate" or "APD"), mailed August 20, 2007.

Predictably, the QF parties' support of the Alternate, essentially because it adopts a Market Index Formula ("MIF") that results in higher payments to QFs and mandates a Third Standard Offer ("SO") contract option for "small" new QFs that would apply regardless of utility need (Third SO). As the investor-owned utilities ("IOU"), *i.e.*, Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE") and SDG&E, point out in their comments, however, those aspects of the Alternate violate the Public Utility Regulatory Policies Act of 1978 ("PURPA") and related Federal Energy Regulatory Commission's ("FERC") regulations and precedent by requiring utilities to pay QFs more than utility avoided costs and to purchase supplies in excess of utility resource needs.

As described below, the QF proposed changes to the Alternate either: (1) are contrary to record evidence; (2) exacerbate PURPA violations and/or (3) exceed the proper scope of comments.

¹ Opening comments were filed by the IOUs, County of Los Angeles, California Wind Energy Association ("CalWEA"), California Cogeneration Council ("CCC"), Cogeneration Association of California and Energy Producers and Users Coalition ("CAC/EPUC"), TURN and Independent Energy Producers ("IEP").

II. DISCUSSION

A. CAC/EPUC's Anticipation of Preemption Issues on Appeal Should Be Disregarded for Procedural and Substantive Reasons

CAC/EPUC's comments anticipating preemption arguments that they believe the utilities may raise on appeal should be disregarded for procedural and substantive reasons. Procedurally, they are outside the proper scope of comments as set forth in Rule 14.3(c) of the Commission's Rules of Practice and Procedure because they fail to "focus on factual, legal or technical errors in the proposed or alternate decision...." Neither the Revised Proposed Decision nor the Alternate addressed or recommended abrogating existing contracts. Substantively, CAC/EPUC's suggestion that contracts should be "grandfathered" even if they were not in existence when the Energy Policy Act of 2005 ("EPAct")² was passed is unreasonable. Further, assuming, *arguendo*, that EPAct does impose mandatory combined heat and power purchase obligations on utilities, a point SDG&E does not here concede, CAC/EPUC has pointed to no express provision of EPAct or implementing FERC regulations that would require a utility to enter into long-term contracts with new QFs³ to purchase power that is not needed to meet system requirements.⁴ In sum, CAC/EPUC's anticipatory preemption arguments are without merit.

B. CAC/EPUC's Definition of "Small" QF Should Be Rejected because It Opens the Door to Large QFs and Further Exacerbates the PURPA Violations Inherent in the Third SO

CAC/EPUC recommends that "small" QFs should be defined "as *either* being under 25 MW of capacity or delivering the annual energy delivery equivalent of 164,250 MWh (25MW x 8760 x

² Energy Policy Act of 2005 §1253, Pub. L. 109-58, 1253, 119 Stat. 594, 967 (2005).

³ D.96-10-036, 68 CPUC2d 434, 1996 Cal PUC LEXIS 1016 at *33 ("Taking a look at the statute, we find no mandated minimum term for PURPA required purchases. Looking to FERC regulations, we similarly find no mandated minimum term.")

⁴ See *City of Ketchikan, Alaska, et al. ("Ketchikan")* (2001) 94 FERC ¶61,293, *reh'g denied*, 95 FERC ¶61,194 (2001), where the FERC stated at 62,062, "[A] qualifying facility may seek to have a utility purchase more energy or capacity than the utility requires to meet its total system load. In such a case, while the utility is legally obligated to purchase any energy or capacity provided by a qualifying facility, the purchase rate should only include payment for energy or capacity which the utility can use to meet its total system load" and "while utilities may have an obligation under PURPA to purchase from a QF, that obligation does not require a utility to pay for capacity that it does not needs." (citing *Connecticut Light and Power Company* (1995) 70 FERC ¶61,012, reconsideration denied, 71 FERC ¶61,035 (1995), appeal dismissed, *Niagra Mohawk Power Corporation v. FERC* (D. C. Cir. 1997) 117 F.3d 1485 "*CL&P*"). See also FERC Docket No. RM06-10-006, Notice of Proposed Rulemaking, *Regulations Applicable to Small Power Production and Cogeneration Facilities*, 71 FR 4532 at 4533 ([T]here is no obligation under PURPA for a utility to pay for capacity that would displace its existing capacity arrangements." *Ketchikan*, 94 FERC ¶62,062, citing *CL&P*.

.75).”⁵ SDG&E disagrees that this change is needed because the APD appropriately defines the small QF as “(1) the project is 25 MW or less, stated as an annual GWh limitation of 164,250 MWh (25 MW x 8760 x .75) or less, (2) consume at least 25% of their power internally and (3) sell all surplus power to the utility.”⁶ Under CAC/EPUC’s proposal, a 90 MW QF that sells only to the IOU in super off-peak periods would be classified as a “small” QF.⁷ But such a QF should not be classified as a “small” QF, and under the APD as written, it is not.⁸

The potential result of CAC/EPUC’s proposal is especially egregious here, where if the APD is adopted as written, the utility would be required to take and pay for the QF power, regardless of the utility’s resource needs—in direct violation of PURPA and related FERC and CPUC precedent.⁹

C. CAC/EPUC’s Proposal to Submit Draft Standard Offer Contracts within 10 Business Days Should Be Rejected

CAC/EPUC proposes that technical workshops be held within 10 business days of the effective date of this decision and that the IOUs shall present at this workshop their draft standard offer contracts.¹⁰ This proposal is unreasonable and unwarranted as it does not provide the parties with adequate time to prepare their draft contract. In addition CAC/EPUC in its comments attached a draft standard offer contract to use as a starting template. SDG&E opposes using CAC/EPUC’s template and supports the APD Finding of Fact 38 that a simplified version of the Edison Electric Institute Master Agreement should be used as the basis for the contract.

D. CAC/EPUC’s Proposed Standards for Adopting Alternative Pricing Are Unsupported and Should Be Rejected

The proposal by CAC/EPUC for the Alternate to adopt standards for adoption of alternative pricing for SRAC should be rejected because the proposed standards are nothing more than a recipe for no change. For example, the proposed requirement of “no exit fees” is impossible to achieve with the Alternate maintaining above market prices for existing QFs since those QF above market

⁵ CAC/EPUC’s opening comments on Alternate Decision p. 13.

⁶ Alternate, p. 120.

⁷ 90 MW x 5 hours/day x 365 days/year = 164,250 MWh.

⁸ SDG&E in its opening comments recommends that small QFs for SDG&E be smaller than 5 MW with an annual limitation of 32,850 MWh.

⁹ See footnote 3.

¹⁰ CAC/EPUC’s Opening Comments, p. 17.

payments are part of exit fees. Similarly, meeting the “maintenance of comparable procurement and market share for existing and new cogeneration” standard would never occur on a prospective basis since any reduction in price from the Alternate’s MIF could be claimed to reduce the cogeneration market share. And the requirement of market prices that reflect “full incremental costs” is simply a rerun of the allegations heard in this proceeding.

If FERC grants any utility’s request for exemption from the PURPA must-buy obligation pursuant to Section 1253 of the EAct, the FERC’s determination should be sufficient for the Commission to adopt a MIF based on day ahead electric prices. FERC’s termination of the must-purchase obligation will be a clear indication that the MRTU day ahead market is fully functional.

E. Use of the Weighted Average of the Administratively Determined Heat Rate and SP-15 Market Prices Is Unsupported by Record Evidence and Exceeds Avoided Costs

There is no basis in the record for the one-third/ two-thirds weighting of the SP-15 calculation of the market heat rate and the administratively determined heat rate as proposed by CCC. SDG&E pointed out in its opening comments that the record does not support the QF assertions regarding underscheduling, undeliverable power, and strategic dispatch. Further, the record establishes that the costs of the California Independent System Operator (“CAISO”) out-of-market purchases, *e.g.*, reliability must run generation, are overwhelming payments for capacity.¹¹ The as-available and firm capacity payments specified in the Alternate will provide QF owners with similar “out-of-market” compensation. There was never a quantified impact of these CAISO purchases on marginal energy prices, and no indication that the CAISO violated its tariffs to depress day ahead market prices.¹² There is nothing in the record that supports assignment of any weight to the administratively determined heat rate.

F. Current Time of Use Factors Should Remain in Place Pending Resolution in the Appropriate Forum

IEP states that the Commission should update the Time of Use (“TOU”) factors in this proceeding to use those approved for use in determining the Market Price Referent in utility Renewable Portfolio Standard (“RPS”) solicitations. There are two problems with the proposal. First, the short run avoided cost (“SRAC”) TOU periods and seasonal periods are different from the

¹¹ Ex. 86, at DTB-14 and Tr. at 3496.

¹² Tr. at 3286, and SDG&E Opening Brief, p. 49.

Time of Delivery (“TOD”) periods developed for RPS solicitations.¹³ Second, the TOD factors apply to an all-in price in the RPS solicitations, while the SRAC has separated energy and capacity. With a single all-in price, there are no separate energy and capacity TOU factors used in the RPS solicitation.

CCC advocates their proposed TOU factors be adopted in this proceeding, and that the utilities “may propose” alternate TOD factors consistent with TOD factors used in other procurement activities in technical workshops. SDG&E is amenable to discussing appropriate TOD factors in technical workshops in this proceeding, however, it disagrees that the CCC proposed factors should be adopted in the interim. As the record showed, the CCC proposal was based on an all-in price and not a separate energy and capacity prices.¹⁴ Therefore, CCC’s proposal is deficient to use for energy prices only. The current TOU factors should remain in place during the interim, pending ultimate resolution in the appropriate forum.

III. CONCLUSION

Accordingly, SDG&E respectfully requests that the Alternate not be modified as recommended by CAC/EPUC, IEP and CCC, consistent with the foregoing discussion. The Alternate should be modified consistent with SDG&E’s Opening Comments filed herein on September 10, 2007.

Respectfully submitted,

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¹³ Both the time periods for summer and winter on-peak are different and the definitions of Summer and Winter are different, so that RPS TOD factors cannot be directly applied to SRAC TOU periods. In addition, if IEP is suggesting that the SRAC time period be changed to match the RPS time period, it should be noted that the SO 2 and SO 4 contracts require that SDG&E provide the QF one (1) year advance notice for changing TOU time periods and seasonal periods from their current definition.

¹⁴ SDG&E Opening Brief, p. 46.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY ON THE ALTERNATE PROPOSED DECISION OF COMMISSIONER GRUENEICH** on all parties identified in R.04-04-003 and R.04-04-025 on the attached service list by U.S. mail and electronic mail, and by Federal Express to the assigned Commissioner(s) and Administrative Law Judge(s).

Dated at San Diego, California, this 17th day of September, 2007.

/s/ JOEL DELLOSA

Joel Delloso

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

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